

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ARINDUS HUMPHREY,

Petitioner,

Case No. 3:96 CR 750

-vs-

MEMORANDUM OPINION
AND ORDER

UNITED STATES OF AMERICA,

Respondent.

KATZ, J.

Petitioner, Arindus Humphrey, proceeding pro se, has filed a third motion to modify his sentence under 18 U.S.C. § 3582(c)(2). (Doc. No. 356). As with his previous two motions, the instant motion is based on the recent Amendment 706 to the Sentencing Guidelines. That Amendment, which lowered the base offense levels applicable to crack cocaine offenses, became effective November 1, 2007 and for most instances reduced the base offense level by two levels. On December 11, 2007 the Sentencing Commission took action which indicated that Amendment 706 may be applied retroactively effective March 3, 2008.

Humphrey fails to comprehend that the only relevant issue is what formed the basis of his punishment. In this case he was punished only for 150 kilograms of *powder* cocaine. This Court has articulated through its prior HUMPHREY orders the reason for denying his previous two motions. Thus, this is more in the nature of a motion for reconsideration, which the Court will deny. Additionally, Petitioner files this motion even though his appeal of this Court's February 3, 2009 order is still pending in the Sixth Circuit Court of Appeals. On March 30, 2009 Humphrey's counsel, Donna Grill of the Public Defender's Office, filed an *Anders* brief with the Sixth Circuit Court of Appeals indicating that a thorough review of the record and research of the applicable

case law led her to a conclusion that this Court's denial of Humphrey's motion for modification of sentence is without merit.

First, this Court has no jurisdiction because of the pendency of the same issues before the Sixth Circuit Court of Appeals. Second, construing the within motion as a motion for reconsideration of this Court's prior order of February, 2009 the Court denies that motion.

IT IS SO ORDERED.

s/ David A. Katz
DAVID A. KATZ
U. S. DISTRICT JUDGE